In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 815

HENRY CHOTEAU, PETITIONER

v.

ROBERT H. LUCAS, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR RESPONDENT

Upon request of counsel for the petitioner further consideration has been given to that part of the argument in our brief in opposition commencing with the paragraph beginning at the bottom of page 5 and continuing to the end of said paragraph at the middle of page 6. It is the contention of petitioner's counsel that an Osage Indian having a certificate of competency has no right to sell or otherwise deal with his equitable or undivided interest in minerals or mineral lands held in trust for the members of the Tribe, and that in this respect Osage Indians of mixed or full blood are not on the same footing as white persons inheriting shares or allotments from Indians and

authorized to deal with such property under the Act of April 12, 1924 (c. 95, 43, Stat. 94). In this contention petitioner's counsel is supported by the decision of the District Court for the Western District of Oklahoma in *In re Denison*, 38 F. (2d) 662, decided March 1, 1930, and upon reconsideration of the question we feel that the statements contained in the paragraph of our brief above referred to are not tenable and should be disregarded.

We nevertheless submit that the petitioner, who was an Osage Indian holding a certificate of competency duly issued to him pursuant to Sec. 7 of the Act of June 28, 1906 (c. 3572, 34 Stat. 579), upon receipt of the income here involved from leases of mineral lands, had an unqualified right to control and dispose of such income, and that the Circuit Court of Appeals was correct in its decision in the instant case in holding the receipt of such income subject to Federal Income Taxes. Accordingly we submit that the petition should be denied.

THOMAS D. THACHER,
Solicitor General.

G. A. YOUNGQUIST,
Assistant Attorney General.

CLAUDE R. BRANCH,
SEWALL KEY,
MORTON PCE FISHER,
Special Assistants to the Attorney General.

PEDRO CAPÓ-RODRÍGUEZ,
Attorney.

MAY, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930